

**UNITED STATES DISTRICT
COURT DISTRICT OF ARIZONA**

IN RE: BARD IVC FILTER

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MDL NO. 2641

JUDGE DAVID G. CAMPBELL

This Document Relates to:

Smith v. C.R. BARD, INC., AND BARD PERIPHERAL VASCULA INC.
Civil Action No. 2:16-cv-03807-DGC

MOTION TO SUBSTITUTE PARTY AND AMEND COMPLAINT

Counsel for Plaintiffs Ronald Smith and Denise Smith respectfully move this court to substitute Denise Smith, the surviving spouse, as the Personal Representative for the Estate of Ronald Smith, Deceased, pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure, and to file an Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2).

1. Plaintiff Ronald Smith's case was filed on or about November 3, 2016 (*Smith v. C.R. BARD, INC., AND BARD PERIPHERAL VASCULAR INC.*; Case No. 2:16-cv-03807-DGC).

2. All active Defendants have been served with process pursuant to Second Amended Case Management Order No. 4 (CMO 4).

- a. On or about November 28, 2016, Defendant C.R. Bard, Inc., was served by the Court's electronic filing system with the Complaint and Request for waiver of service.
- b. On or about November 28, 2016, Defendants Bard Peripheral Vascular Inc., was served by the Court's electronic filing system with the Complaint and Request for waiver of service.

3. On or about October 4, 2017, Plaintiffs' counsel was informed that Ronald Smith passed away on or about December 5, 2016.

4. Ronald Smith's action against Defendants survives his death and is not extinguished.

5. Plaintiffs' counsel filed the Notice and Suggestion of Death on or about December 19, 2017 [Doc. 9405].

6. On or about December 20, 2016, City of Oswego, New York named Denise Smith as the informant of decedent the Personal Representative for the Estate of Ronald Smith.

7. Plaintiff thus moves to substitute Denise Smith, as Personal Representative for the Estate of Ronald Smith, Deceased, as Plaintiff in the present action.

8. Additionally, Counsel seeks to amend the Complaint, as well as the caption of the Complaint to correct the proper Plaintiffs (specifically Denise Smith, as Personal Representative for the Estate of Ronald Smith, Deceased) and to update and include information, allegations and actions within the Complaint to reflect that Plaintiff Ronald Smith is now deceased.

9. Pursuant to Federal Rules of Civil Procedure 15(a)(2) a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

WHEREFORE, Counsel for Plaintiffs, Ronald Smith and Denise Smith, respectfully request the Court grant Plaintiffs' Motion to Substitute Denise Smith, as Personal Representative for the Estate of Ronald Smith, Deceased, and to grant leave to file the Amended Complaint and directing the Clerk of the Court to enter the Amended Complaint, attached hereto, into the record of this matter.

Dated: May 11, 2018

Respectfully submitted,

By: /s/ Monte Bond

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ATTORNEY FOR PLAINTIFF(S)

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

Dated: May 11, 2018

Respectfully submitted,

/s/ Monte Bond

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